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OFFICE OF PETITIONS

In re Application of Mirme	:	
Application No. 10/765,740	:	Letter Regarding PTA
Filing Date: January 27, 2004	:	
Attorney Docket No. 3619.14US01	:	

This letter is in response to the "Patent Term Adjustment Letter of Candor and Good Faith," filed December 5, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The determination of PTA at the time of the mailing of the Notice of Allowance is 53 days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is 53 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 1, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 84 days.

The Office initially determined a patent term adjustment of 84 days based on an adjustment for PTO delay of 123 days, pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. 1.703(a)(1), and reduced by 3 days and 36 days for applicant delay pursuant to 37 C.F.R. 1.704(b).

A review of the record reveals that Applicants should have been assessed an additional delay of 31 days. A reply to an Office action was filed September 30, 2005. An IDS was filed on October 31, 2005. The IDS was not expressly requested by the examiner and did not include a 37 CFR 1.704(d) statement.

Per 37 CFR 1.704(c)(8), the period of adjustment will be reduced when a supplemental reply or other paper is filed after a reply has been filed. The period of adjustment will start from the date after the submission of the first reply and will end on the date that the supplemental reply or other paper is filed. This category does not apply to papers expressly requested by the examiner.

MPEP 2732:

37 CFR 1.704(c)(8) establishes submission of a supplemental reply or other paper after a reply has been filed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of a supplemental reply or other paper (e.g., an information disclosure statement (IDS) or petition) after an initial reply was filed requires the Office to restart consideration of the initial reply in view of the supplemental reply or other paper, which will result in a delay in the Office's response to the initial reply. 37 CFR 1.704(c)(8) does not apply to a supplemental reply or other paper that was expressly requested by the examiner. If an amendment is requested by an examiner, the examiner will have the paper processed so that it is included as part of an interview summary or examiner's amendment and not a separate paper for PALM to flag in the patent term adjustment calculation. 37 CFR 1.704(c)(8) also provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or such other paper was filed.

In view of the previous facts, the correct determination of PTA at the time of the mailing of the Notice of Allowance is 53 days (123 days of PTO delay reduced by 80 (31 + 3 + 36) days of applicant delay.

The instant letter was the result of the good faith and candor of applicant. Since the instant letter was only filed to advise the Office of an Office error, and not to increase the patent term adjustment, the \$200.00 application fee under 37 C.F.R. 1.705(b) will not be charged to petitioner's deposit account.

The application file is being forwarded to the Office of Publications for issuance of the patent. The patent term adjustment shown on the patent (and in the Issue Notification mailed approximately three weeks prior to issuance) will include any additional patent term accrued pursuant to sections 1.702(a)(4) and 1.703(b).

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brannley at (571) 272-3203.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Wednesday

PALM INTRANET

Date: 5/2/2007

Time: 19:27:11

PTA Calculations for Application: 10/765740

Application Filing Date:	01/27/2004	PTO Delay (PTO):	123
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	39
Post-Issue Petitions:	0	Total PTA (days):	53
PTO Delay Adjustment:	-31		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
54	05/02/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		31	
43	11/01/2006	MAIL NOTICE OF ALLOWANCE			
42	11/01/2006	MAIL FORMAL DRAWINGS REQUIRED			
41	11/01/2006	MAIL EXAMINER'S AMENDMENT			
40	10/30/2006	ISSUE REVISION COMPLETED			
39	10/30/2006	FORMAL DRAWINGS REQUIRED			
38	10/30/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
37	10/30/2006	EXAMINER'S AMENDMENT COMMUNICATION			
36	10/30/2006	NOTICE OF ALLOWABILITY			
35	10/13/2006	NEW OR ADDITIONAL DRAWING FILED			
34	10/19/2006	DATE FORWARDED TO EXAMINER			
33	10/13/2006	AMENDMENT AFTER FINAL REJECTION		36	30
32	10/13/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
30	06/07/2006	MAIL FINAL REJECTION (PTOL - 326)			
29	06/01/2006	FINAL REJECTION			
28	12/27/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	01/19/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
26	03/23/2006	DATE FORWARDED TO EXAMINER			
25	03/16/2006	RESPONSE AFTER NON-FINAL ACTION		3	22
24	01/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	12/27/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	12/13/2005	MAIL NON-FINAL REJECTION			

21	12/12/2005	NON-FINAL REJECTION			
20	10/31/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
19	10/31/2005	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
18	10/06/2005	DATE FORWARDED TO EXAMINER			
17	09/30/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
16	09/30/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
14	07/28/2005	MAIL RESTRICTION REQUIREMENT	123		-1
13	07/27/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
12	04/14/2005	CASE DOCKETED TO EXAMINER IN GAU			
11	01/11/2005	CASE DOCKETED TO EXAMINER IN GAU			
10	08/11/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	08/11/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	06/11/2004	APPLICATION RETURN FROM OIPE			
7	06/11/2004	APPLICATION RETURN TO OIPE			
6	06/11/2004	APPLICATION DISPATCHED FROM OIPE			
5	06/14/2004	APPLICATION IS NOW COMPLETE			
4	03/10/2004	CLEARED BY OIPE CSR			
3	03/10/2004	CASE CLASSIFIED BY OIPE			
2	03/04/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/27/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

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